

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTONIO D. PERRY,	§
	§
Defendant Below-	§ No. 656, 2009
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for County
STATE OF DELAWARE,	§ Cr. ID Nos. 0804006166,
	§ 0703006732, 0612004185, and
Plaintiff Below-	§ 0611005296
Appellee.	§

Submitted: April 12, 2010<sup>1</sup>

Decided: April 27, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 27<sup>th</sup> day of April 2010, it appears to the Court that:

(1) On November 9, 2009, the Court received appellant's notice of appeal from a Superior Court judgment, entered October 2, 2009, which sentenced appellant for a violation of probation (VOP). Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before November 2, 2009.

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<sup>1</sup> The Court had stayed further action in this case pending its consideration of a rule change regarding the extent of defense counsel's continuing obligation on appeal to a client sentenced for a probation violation. *See* Del. Supr. Ct. R. 26(k) (effective April 12, 2010).

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing appellant to show cause why the appeal should not be dismissed as untimely filed.<sup>2</sup> Appellant filed a response to the notice to show cause on November 17, 2009. He asserted that his appeal was late because he did not have adequate time to get into the prison law library in order to prepare his appeal. He also asserted that, even if he had his appeal prepared in time, the notarial officer within the prison was not available to notarize his appeal.<sup>3</sup>

(3) After the State filed its reply to appellant's response, the Clerk of the Court directed the State, as well as Perry's counsel in the VOP proceedings, to file memoranda setting forth their respective positions on the continuing obligation of court-appointed counsel to represent a defendant in a VOP appeal. After careful consideration of the parties' respective contentions on appeal, we have determined that this untimely appeal must be dismissed.

(4) Time is a jurisdictional requirement.<sup>4</sup> A notice of appeal must be received by the Office of the Clerk of this Court within the applicable

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<sup>2</sup>Del. Supr. Ct. R. 6(a)(ii).

<sup>3</sup>The Supreme Court Rules do not require that a notice of appeal be notarized.

<sup>4</sup>*Carr v. State*, 554 A.2d 778, 779 (Del.), *cert. denied*, 493 U.S. 829 (1989).

time period in order to be effective.<sup>5</sup> Appellant was informed of the thirty-day limitations period yet failed to file his notice of appeal in a timely manner. An appellant's pro se status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.<sup>6</sup> Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.<sup>7</sup>

(5) There is nothing in the record to reflect that appellant's failure to file a timely notice of appeal in this case is attributable to court-related personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>5</sup>Del. Supr. Ct. R. 10(a).

<sup>6</sup>*Carr v. State*, 554 A.2d at 779.

<sup>7</sup>*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).